

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE IAN OSBAND,

Petitioner, No. CIV S-97-0152 WBS KJM

vs. DEATH PENALTY CASE

ROBERT L. AYERS, JR.,
Acting Warden of San Quentin
State Prison,

Respondent. ORDER

The undersigned held a telephonic status conference on January 5, 2007 to hear argument on petitioner's motions for supplemental discovery and to continue the evidentiary hearing. Tivon Schardl and Tim Brosnan participated for petitioner. Ward Campbell and Stephanie Mitchell participated for respondent. Upon review of the motions and the documents in support and opposition, upon hearing the arguments of counsel and good cause appearing therefor, the court made the following findings and orders and announced them to the parties at the hearing.

Petitioner seeks issuance of a subpoena to the Sacramento County Bar Association's Indigent Defense Panel ("IDP") for files on one of his trial attorneys. Respondent does not oppose the request. Because the discovery of these files may lead to the discovery of information relevant to the issues to be developed during the January 22, 2007 evidentiary

1 hearing, the undersigned finds good cause for issuance of the subpoena and petitioner's
2 December 20, 2006 Supplemental Motion for Discovery is granted. Rule 6, Rules Governing
3 Section 2254 Cases. Because the evidentiary hearing is imminent, petitioner's counsel is
4 directed to serve the subpoena on the IDP today.

5 The parties discussed two issues related to service of the subpoena. First, the
6 undersigned raised the issue of the time associated with any potential objection to or motion to
7 quash the subpoena. Second, respondent raised the issue of notice to the attorney who is the
8 subject of the IDP file. There is concern that, without prompt notice to the attorney, there could
9 be a delay in any objections to provision of the IDP file to petitioner. The parties are instructed
10 to notify the court by letter brief by the close of business today: (1) whether the court is able to
11 require any objection to the subpoena be made on shortened time, and (2) the best method for
12 notifying the affected attorney of the subpoena.

13 Petitioner's December 29, 2006 motion for a continuance is submitted. The
14 undersigned expects petitioner to proceed with the expectation that the evidentiary hearing will
15 begin as scheduled on January 22. However, a second telephonic status conference has been set
16 for January 12, 2007 at 11:00 a.m. At that time, the parties shall inform the court of the status of
17 discovery of the IDP file, related investigations, whether either party will seek to supplement
18 their witness or exhibit lists, and whether the parties are able to agree to a schedule for the
19 evidentiary hearing that would accommodate the readiness of counsel in light of recently
20 discovered information.

21 DATED: January 5, 2007.

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24 U.S. MAGISTRATE JUDGE
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